

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4540 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMANBHAI PUNAMBHAI PATEL

Versus

KHEDA DISTRICT PANCHAYAT

Appearance:

MR HM PARIKH for Petitioner

MR ANANT S DAVE for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 09/10/97

ORAL JUDGEMENT

The petitioner was working as a Primary Teacher with respondent No.1. He applied to the District Education Officer, Kheda for correction of his date of birth in the month of March, 1997. According to the petitioner, the date of birth 1.3.1939 as entered in the Service Book was not correct and it should be 1.8.1939. Thus, as per the recorded date of birth, the petitioner was due to retire in the month of March 1997 and he could

continue in service upto the end of the session i.e. upto 31.5.1997. The petitioner's application was accepted by the District Primary Education Officer by order dated 28.4.1997. The authority accepting the petitioner's date of birth as 1.8.1939, and directed that he will retire on 31.10.1997. It was made clear that the petitioner's date of retirement will be 31.8.1997 and as the session ends in October, the date of retirement will be 31.10.1997. However, the District Primary Education Officer, by order dated 16.6.1997, recalled the order dated 28.4.1997 and considering the earlier recorded date of birth as 1.3.1939, directed that the petitioner shall be deemed to have retired with effect from 31.5.1997.

2. Mr H M Parikh, the learned Advocate appearing for the petitioner contends that the order dated 16.6.1997 is per se illegal as it is against the principles of natural justice, inasmuch as that the said order has been passed without hearing the petitioner. It is also contended that the petitioner could not have been retired with retrospective effect.

3. I have considered the contentions raised by the petitioner. It is now well settled that prayer for correction in the date of birth should not be entertained just at the verge of date of retirement. Reference may be made to a decision of the Apex Court reported in JT 1995 (4) SC 23, 1993 (3) SCC 263 and 1997 (4) SCC 647. It is not in dispute that the petitioner had made an application for correction of his date of birth in March, 1997 when his due date of retirement was 31.3.1997. Thus, the order dated 28.4.1997, entertaining the application and making correction, on the face, is illegal and void. The illegality is so apparent that it does not require any hearing. The authority has only corrected the error by restoring to the original date of birth recorded in the Service Book. In view of the above, I find no substance in the first contention raised by the petitioner. So far as the second contention is concerned, since the order dated 28.4.1997 is found to be illegal and void, automatically the date of retirement of the petitioner comes to 31.3.1997 and as per the prevalent system, the petitioner would have retired at the end of the session i.e. on 31.5.1997. Therefore, it cannot be said that the petitioner has been given any retrospective date of retirement. Hence I find no substance in the second contention as well.

4. Since the petitioner has continued upto 16.6.1997 i.e. after the due date of retirement of 31.5.1997 under the orders of the respondent and that he has further

continued under the interim relief of this Court, there shall be no recovery of salary from the petitioner. However, the pension and other pensionary benefits shall be calculated taking into account the date of birth as 1.3.1939 and the date of retirement as 31.3.1997 and the actual date of retirement as 31.5.1997.

Rule discharged. The interim relief stands vacated.

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msp